REMARKS

The Examiner has revised the current rejection in light of new prior art and a reformulated rejection. As set forth below, such new rejection is still deficient. However, despite such deficiencies and in the spirit of expediting the prosecution of the present application, applicant has incorporated the subject matter of multiple dependent claims into each of the independent claims. Since the subject matter of such dependent claims was already considered by the Examiner, it is asserted that such claim amendments would **not** require new search and/or consideration.

The Examiner has rejected Claims 1, 2, 4, 7, 10-12, 14, 17, 20-22, 24, 27, 30 under 35 USC §103(a) as being unpatentable over Cheng (U.S. Patent 6,151,643) in view of Averbuch et al. (U.S. Patent 5,896,566). Applicant respectfully disagrees with such rejection.

Specifically, in response to applicant's latest arguments and amendments, the Examiner has relied on col. 20, line 2 from Cheng to meet applicant's claimed "sending a tag indicative of availability of said updated computer file to said database of computers" (see this or similar, but not necessarily identical language in each of the independent claims). In particular, the Examiner relies on the "record from the update table" to meet applicant's claimed "tag indicative of availability of said updated computer file."

However, it appears that the Examiner has not fully considered the context of such record in Cheng. As noted from the Cheng excerpt below, such "record from the update table" of Cheng is sent to users.

> "Specifically, when a new software update or software product is available, the service provider computer 102 sends an email to those users who have requested notification by email. The email contains information about the software update, and may include the record from the update table 807 about the software update, including the URL data 823 used to access the software update files." (see col. 19, line 64 - col. 20, line 5)

Thus, it is clear that, contrary to the Examiner arguments, Cheng does not meet

applicant's claimed "sending a tag indicative of availability of said updated computer file to said database of computers" (emphasis added), as claimed.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. Nevertheless, despite such paramount deficiencies and in the spirit of expediting the prosecution of the present application, applicant has included the subject matters of Claim 2-3 and 7 et al. in each of the independent claims.

With respect to the subject matter of former Claim 7 et al. (now incorporated into each of the independent claims), the Examiner relies on the following excerpt from Cheng to meet applicant's claimed technique "wherein said tag includes data indicative of a version level of said computer file."

> "The update database of software update information is preferably maintained by a supplier of the client application, who also maintains the service of providing software updates. This database is created by engaging with numerous software vendors to provide information for software updates of their products to the service provider. Preferably, the software vendors provide the service provider information describing the software update, including version information, file formats, configuration information, and network location." (see col. 4, lines 54-59)

However, such excerpt simply discloses that a version is supplied by software vendors. It is noted above that the Examiner has relied on the record from the update table 807 (see Figure 8, and col. 20, line 2 et al.) to meet applicant's claimed "tag" which is sent to a database of computers. However, inspection of Figure 8 indicates that the record 807 does not include any version information. Thus, Cheng simply fails to meet a tag sent to a database of computers, wherein the tag includes data indicative of a version level of the computer file, as claimed.

With respect to the subject matter of former Claim 3 et al. (now incorporated into each of the independent claims), the Examiner has rejected such subject matter under 35 USC §103(a) as being unpatentable over Cheng (U.S. Patent 6,151,643) in view of Averbuch et al. (U.S. Patent 5,896,566), and further in view of Neal (U.S. Patent 6,192,518). Specifically, the Examiner relies on col. 5, lines 11-13 from Neal to meet applicant's claimed technique "wherein said tag is part of an e-mail message header."

However, Neal merely discloses a tag in a header. As noted above, the Examiner has not made a prior art showing of applicant's claimed tag sent to a database of computers, wherein the tag includes data indicative of a version level of the computer file, as claimed. Thus, Neal, in combination with the remaining references, fails to even suggest a version level tag sent to the database of computers in an e-mail message header, as claimed. Only applicant teaches and claims such specific medium for sending a version level tag to a database of computers, for providing improved access thereto, etc.

Again, applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. A notice of allowance or a specific prior art showing of all of such limitations, in combination with the remaining claim elements, is respectfully requested.

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence

on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P474/01.112.01).

Respectfully submitted,
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